

\* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

January 17, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Hearing Officer's Decision*

Name of Case: Personnel Security Hearing

Date of Filing: November 28, 2005

Case Number: TSO-0317

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to possess an access authorization under the Department of Energy (DOE) regulations entitled "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1/</sup> Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.<sup>2/</sup> After reviewing the evidence before me I find the Individual's access authorization should not be restored.

*I. Background*

The misuse of alcohol and an evaluative report of the Individual by a DOE-contractor psychiatrist (DOE Psychiatrist) have been cited by the Local Security Office (LSO) as constituting derogatory information casting doubt as to the Individual's eligibility to possess a security clearance. In 2000, the Individual was arrested and charged with Aggravated Driving While Intoxicated (DWI). Again in 2003, the Individual was arrested and charged with Driving Under the Influence of Alcohol (DUI). During his Personnel Security Interview (PSI) in 2004, the Individual admitted that alcohol led to his being placed on academic probation in college and losing his internship.

After interviewing the Individual and reviewing his Personnel Security File, the DOE Psychiatrist wrote an evaluative report describing his findings.<sup>3/</sup> He opined that the

---

<sup>1/</sup> 10 C.F.R. Part 710, Subpart A.

<sup>2/</sup> 10 C.F.R. § 710.5(a).

<sup>3/</sup> DOE Ex. 8.

Individual has been a user of alcohol habitually to excess and is alcohol dependent.<sup>4/</sup> If not alcohol dependent, then by default, he would be suffering from alcohol abuse.<sup>5/</sup> The DOE Psychiatrist also opined that he has an illness which causes or may cause, a significant defect in his judgment or reliability.<sup>6/</sup> The DOE Psychiatrist's opinion was based on the interview and the Individual's Personnel Security File.<sup>7/</sup>

Because the derogatory information concerning the Individual had not been resolved, the LSO initiated this administrative review proceeding. The LSO issued a Notification Letter to the Individual, citing the incidents described above as derogatory information that created a substantial doubt as to the Individual's eligibility for an access authorization under Criteria H<sup>8/</sup> and J.<sup>9/</sup> Criterion H refers to information indicating that an individual has "an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability."<sup>10/</sup> Criterion J refers to information indicating that an individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse."<sup>11/</sup> Upon receipt of the Notification Letter, the Individual requested a hearing. The DOE sent the hearing request to the OHA, and the OHA Director appointed me as the Hearing Officer in this case.<sup>12/</sup> I convened a hearing in this matter.<sup>13/</sup>

At the hearing, the Individual represented himself. He offered his own testimony. The Local Security Office presented one witness, the DOE Psychiatrist. The local DOE Office entered 21 exhibits into the record.

---

<sup>4/</sup> *Id.* at 29.

<sup>5/</sup> *Id.*

<sup>6/</sup> *Id.*

<sup>7/</sup> *Id.*

<sup>8/</sup> 10 C.F.R. § 710.8(h).

<sup>9/</sup> *Id.* at § 710.8(j).

<sup>10/</sup> *Id.* at § 710.8(h).

<sup>11/</sup> *Id.* at § 710.8(j).

<sup>12/</sup> 10 C.F.R. § 710.25(a), (b).

<sup>13/</sup> 10 C.F.R. § 710.25(g).

## *II. Standard of Review*

Under Part 710, DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility."<sup>14/</sup> After a question concerning an individual's eligibility for an access authorization has been properly raised, the burden shifts to the individual who must come forward with convincing factual evidence that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest."<sup>15/</sup>

In considering the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in the regulations: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the Individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors.<sup>16/</sup> After consideration of all the relevant information in the record, I conclude that a significant security concern was raised by the derogatory information. Consequently, it is my decision that the Individual's access authorization should not be restored.

## *III. The Hearing*

At the hearing, the Individual testified about the program he performed as a result of his 2003 DUI arrest.<sup>17/</sup> He was required to submit to drug testing for the first six months of the program, three times a week.<sup>18/</sup> In addition, he attended counseling meetings usually four to five times a week, and every time he attended a meeting he was required to take a breathalyzer test.<sup>19/</sup> The program started in May 2004 and ended in April 2005.<sup>20/</sup> After the

---

<sup>14/</sup> 10 C.F.R. § 710.10(a).

<sup>15/</sup> See 10 C.F.R. § 710.27(a).

<sup>16/</sup> 10 C.F.R. § 710.7(c)

<sup>17/</sup> Hearing Transcript (Hearing. Tr.) at 7.

<sup>18/</sup> *Id.* at 8.

<sup>19/</sup> *Id.*

<sup>20/</sup> *Id.* at 9-10.

counseling ended, the Individual continued to attend Alcoholics Anonymous (AA) meetings for about another two months.<sup>21/</sup> He quit attending AA meetings because he felt it was repetitive and, therefore, annoying.<sup>22/</sup> The Individual testified that he has been consuming alcoholic beverages on a social basis since he quit attending AA.<sup>23/</sup> He testified that he consumed one beer approximately two weeks prior to the hearing.<sup>24/</sup> He stated that he believes he can control his alcohol consumption.<sup>25/</sup> When asked if he has a plan in place if his consumption of alcohol increases, he said he does not.<sup>26/</sup>

At the hearing, the DOE Psychiatrist confirmed his diagnosis that the Individual was alcohol dependent and thus had a mental condition that could cause a significant defect in judgment and reliability.<sup>27/</sup> He stated that the evidence to support the diagnosis of alcohol dependence was strong.<sup>28/</sup> The Individual satisfied five criteria for Alcohol Dependence in *The Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR* (DSM-IV TR). The DOE Psychiatrist stated:

I mean, very briefly, criterion one is tolerance; criterion three is loss of control; criterion four is unsuccessful efforts at trying to cut down or control; criterion six is interferes with job, work, that sort of thing; criterion seven is continue to drink in spite of psychological or physical problems. He was having blackouts and continuing to drink.<sup>29/</sup>

The Individual's alcohol dependence has caused problems at school and with his job, in addition to his two DUIs.<sup>30/</sup> The DOE Psychiatrist stated that he was 100 percent certain

---

<sup>21/</sup> *Id.* at 17.

<sup>22/</sup> *Id.* at 20.

<sup>23/</sup> *Id.* at 24-25.

<sup>24/</sup> *Id.*

<sup>25/</sup> *Id.* at 27.

<sup>26/</sup> *Id.*

<sup>27/</sup> *Id.* at 37-38.

<sup>28/</sup> *Id.* at 38.

<sup>29/</sup> *Id.*

<sup>30/</sup> *Id.*

of his diagnosis and believed that 100 out of 100 doctors equally trained would agree with him.<sup>31/</sup>

He then testified that at the time he evaluated the Individual there was no evidence of rehabilitation or reformation, even taking into consideration his counseling and attendance at AA.<sup>32/</sup> The DOE Psychiatrist stated that if the Individual had continued to attend AA for at least another year and maintained his sobriety during that time, he would have shown adequate evidence of rehabilitation and reformation.<sup>33/</sup> If the Individual did not attend AA and merely stopped drinking on his own, the DOE Psychiatrist believed he needed to be abstinent for a period of five years.<sup>34/</sup>

#### *IV. Findings and Conclusions*

After reviewing the testimony presented in this case as well as the other evidence contained in the record, I find that the Individual does have an illness or mental condition which causes or may cause a significant defect in judgment or reliability, so as to raise a security concern. In addition, I find that the Individual does have an alcohol problem that also raises a security concern. Although at the time he met with the DOE Psychiatrist he was beginning his reformation and rehabilitation, his actions since that time have negated any progress he had made at that time.

After a question concerning an individual's eligibility for an access authorization has been properly raised, as it has in this case, the burden shifts to the individual who must come forward with convincing factual evidence that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest."<sup>35/</sup> The Individual presented no such evidence at the hearing. The Individual testified that he last consumed alcohol two weeks prior to the hearing. He no longer attends AA. He believes he can control his drinking, however, he does not have a plan if it were to increase. None of the evidence provided by the Individual gives me any assurance that his alcohol-related problems will not recur.

---

<sup>31/</sup> *Id.* at 39.

<sup>32/</sup> *Id.*

<sup>33/</sup> *Id.* at 39-40.

<sup>34/</sup> *Id.* at 41.

<sup>35/</sup> *See* 10 C.F.R. § 710.27(a).

In sum, I find the expert testimony of the DOE Psychiatrist persuasive. Consequently, I find that concerns raised by the Individual's diagnosis of alcohol dependence were not mitigated at the time of the hearing. I was convinced by the expert testimony. The security concern raised by the DOE Psychiatrist's report and the other cited Criteria H and J information has not been mitigated by the evidence provided by the Individual.

V. *Conclusion*

Upon consideration of the record in this case, I find that Criteria H and J security concerns regarding the Individual's eligibility for a security clearance have not been mitigated. Therefore, I conclude that restoring the Individual's access authorization would endanger the common defense and security and would be clearly inconsistent with the national interest. 10 C.F.R. § 710.27(a). Consequently, it is my decision that the Individual's access authorization should not be restored.

The review procedures applicable to proceedings under Part 710 were revised effective September 11, 2001. 66 Fed. Reg. 47061 (September 11, 2001). Under the revised procedures, the review is performed by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Janet R. H. Fishman  
Hearing Officer  
Office of Hearings and Appeals

Date: January 17, 2007